

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL CLANCY, et al., ) Case No. 22 C 1250  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE SALVATION ARMY, an Illinois )  
nonprofit corporation, ) Chicago, Illinois  
 ) January 22, 2025  
Defendant. ) 9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION/STATUS HEARING  
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

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For the Defendant: CROWELL & MORING, LLP  
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PROCEEDINGS REPORTED BY STENOTYPE  
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1 (Proceedings heard in open court:)

2 THE CLERK: Calling case 22 Civil 1250, Clancy, et  
3 al., versus The Salvation Army.

4 THE COURT: Good morning. Why don't we start with  
5 appearances for the record, starting with counsel for the  
6 plaintiffs.

7 MS. SRINIVASAN: Sure. Harini Srinivasan from Cohen  
8 Milstein Sellers & Toll on behalf of plaintiffs.

9 MR. FREEDMAN: Michael Freedman from Rosen Bien Galvan  
10 & Grunfeld also on behalf of plaintiffs.

11 MS. ABER: Good morning, Your Honor. Katie Aber on  
12 behalf of defendant.

13 MS. LESSER: Good morning. Rachel Lesser from Crowell  
14 & Moring also on behalf of defendant.

15 MS. JACKSON: Good morning, Your Honor. Toni Michelle  
16 Jackson on behalf of The Salvation Army from Crowell & Moring.

17 THE COURT: Good morning. Nice to see everybody.  
18 Welcome to Chicago in January. I appreciate you coming in for  
19 this.

20 As you, no doubt, know, the case has been pending for  
21 a long time, and I thought that it was time that we all met and  
22 talked about how things were coming along. So I appreciate it.  
23 And we can talk about all of that.

24 The motion to withdraw as counsel for certain opt-ins,  
25 I understand that that was not objected to by the defense.

1           That motion is granted. That's docket No. 238.

2           I am assuming, plaintiffs' counsel, you haven't heard  
3 anything from those particular former clients?

4           MS. SRINIVASAN: No, we have not.

5           THE COURT: My view is that in addition to counsel  
6 being given leave to withdraw, giving them leave to withdraw  
7 from the representation of those plaintiffs, because those  
8 plaintiffs have not responded to counsel, and they have been  
9 given an opportunity to know what's happening here, that is  
10 enough for me to conclude that those plaintiffs are not  
11 prosecuting their individual claims.

12           I am dismissing their claims without prejudice, with  
13 leave to reinstate by February 19th, 2025. If they don't move  
14 to reinstate their claims by then and demonstrate an intent to  
15 prosecute by full and complete participation in this  
16 litigation, then their claims will be automatically dismissed  
17 with prejudice for failure to prosecute.

18           I did consider giving them more time to ask to be  
19 reinstated, but this case has been pending long enough, and  
20 either plaintiffs are invested or they're not invested in  
21 seeing the case to the finish line. And so I'll give them  
22 about four weeks. And if we don't hear from them, then their  
23 actions or their claims are dismissed with prejudice.

24           The motion to set a briefing schedule on the motion to  
25 dismiss is denied, because plaintiffs filed a response, and I

1 am not authorizing a written reply. We're going to talk about  
2 it now.

3 So that motion, which is docket 236, is denied.

4 Let's turn to the motion to dismiss.

5 On behalf of defendant, what's your position with  
6 respect to Mr. Stafford who, it sounds like, sent in some  
7 responses late?

8 You can have a seat. Just speak into a microphone.

9 MS. ABER: Sure.

10 Your Honor, our position with respect to Mr. Stafford  
11 is that his claims should be dismissed as well.

12 His responses were untimely. The plaintiffs had  
13 almost four months to reply to the RFAs. We extended the fact  
14 discovery deadline from October 25th to December 31st. The  
15 responses were not received by the end of the fact discovery  
16 deadline. They also were not received by our meet-and-confer  
17 by the time we filed our motion.

18 It seems to us that what plaintiffs want to do here is  
19 keep extending and keeping open the fact discovery to allow  
20 these responses to continue rolling in, and that's just  
21 inappropriate. Given that fact discovery has ended now,  
22 Mr. Stafford's responses should not be considered timely and he  
23 should be dismissed.

24 THE COURT: I may have miscounted as I was trying to  
25 keep track of the different plaintiffs and the timing of their

1 responses, but have there been some plaintiffs who did respond  
2 outside the time you had originally, either by rule or by  
3 agreement, set that the defendant has decided to accept and not  
4 dismiss on?

5 MS. ABER: Yes, Your Honor. There were two opt-in  
6 plaintiffs who did not respond by the December 31st deadline.

7 But before we filed our motion, plaintiffs' counsel  
8 informed us that they had gotten into contact with them, that  
9 they were incarcerated, but would be able to respond before we  
10 filed our motion, and so we did not include them in our motion.

11 So the five that were included in our motion were ones  
12 who were outstanding as of that time and we had not heard from  
13 plaintiffs' counsel that they had made contact with.

14 THE COURT: And what's your reply to the argument  
15 that: You have 55 responses. Four more aren't going to  
16 meaningfully change the landscape, one way or the other, on the  
17 case. And so dismissal of those is really too harsh a  
18 response?

19 MS. ABER: Well, I think we have two responses to  
20 that.

21 One is that it is the plaintiffs' obligation to  
22 respond to discovery, and it is not appropriate for plaintiffs  
23 to remain in this case if they are not fulfilling their duty to  
24 respond to discovery.

25 As far as the burden on TSA, Salvation Army, this was

1 a small subset of the opt-in population, to begin with. So  
2 while five individuals may be a small subset of that 55  
3 original set of opt-in plaintiffs, we were only getting a small  
4 amount of responses, to begin with, and this has reduced that  
5 even further.

6 I think we have the right to individualized discovery.  
7 We agreed to a certain number. And so it would unfairly  
8 prejudice The Salvation Army to not even be able to get that  
9 amount of discovery when this Court recognized in its order  
10 that that was a fairly small amount.

11 And also that the dismissal of these plaintiffs,  
12 because I think plaintiffs' counsel argued in their motion for  
13 protective order, that this would likely lead to the dismissal  
14 of some plaintiffs because there have been problems with  
15 responsiveness all along, and that that -- having that small  
16 number dismissed was -- would not lead to any disproportionate  
17 problem in chilling the class or winnowing it down.

18 And to that, I think --

19 THE COURT: I suppose I am just trying to drill down  
20 on --

21 MS. ABER: Sure.

22 THE COURT: -- what meaningful change in the landscape  
23 of information would come from, for example, deeming the  
24 requests to admit of those plaintiffs admitted?

25 I mean, that's usually the response to untimely

1 responses to requests to admit, is they're admitted, and then  
2 everyone moves forward from there.

3 MS. ABER: Yes, Your Honor.

4 In this case, we know that plaintiffs are filing for  
5 class certification, so the individualized differences between  
6 plaintiffs matter. So just having deemed them admitted in some  
7 cases, perhaps that would be helpful, but also it does not  
8 provide the individualized responses that we would be using in  
9 a response to class certification.

10 THE COURT: Well, why is that?

11 If you had four to five requests to admit that were  
12 just admitted outright without any kind of lawyerly response in  
13 response to them, why wouldn't that advance your cause?  
14 Because you would then cite to those to say: Here are some  
15 individualized issues, because these X number are deemed to  
16 have admitted to, effectively, your theory of some critical  
17 facts of the case.

18 MS. ABER: Well, I think we can't know that, Your  
19 Honor, because we don't know what individualized responses we  
20 might have gotten, had these plaintiffs responded, that could  
21 have been useful to us had there been, for example, an answer  
22 to the requests for admission regarding whether anyone had told  
23 them that they were an employee.

24 While a response of: Admit that no one has told you  
25 that you were an employee, may be useful to us, in some ways,

1 there are plenty of other responses that could be useful on the  
2 motion for class certification, an opposition to a motion for  
3 class certification, because they represent the individualized  
4 experiences of the beneficiaries at the ARC.

5 THE COURT: And you think those would have come from a  
6 response to the requests to admit?

7 MS. ABER: Yes, Your Honor.

8 THE COURT: For the plaintiffs, why aren't we just in  
9 the same position you're in with respect to the clients that  
10 you've lost contact with and you moved to withdraw?

11 If they're not responding to the requests to admit,  
12 why isn't that effectively the same problem you've encountered  
13 before and we need to move the case forward?

14 And if I don't have the confidence that they're going  
15 to participate, shouldn't we get to that understanding sooner  
16 rather than later?

17 MS. SRINIVASAN: Right. I think the distinction  
18 between these, I'll say, four individuals who haven't provided  
19 responses --

20 THE COURT: Can I interrupt just to say, there is no  
21 dispute that one person is deceased. And so that's not really  
22 at issue meaningfully, right?

23 MS. ABER: That's --

24 MS. SRINIVASAN: Oh, sorry. Go ahead.

25 MS. ABER: That was one of the original eight people



1 who did not respond and was not included in our motion.

2 MS. SRINIVASAN: Right. My reference to the four  
3 individuals, Your Honor, is that one individual did submit the  
4 RFAs. I understand defendant's position is that those were  
5 untimely.

6 But to respond to your question first. I think the  
7 distinction between those four who have not yet provided  
8 responses to RFAs and the other individuals in our motion to  
9 withdraw is that these four have responded to discovery. They  
10 have provided interrogatory responses. They have provided  
11 those responses with penalty of perjury. They have produced  
12 any responsive documents that they had in their possession.  
13 And so the -- they have shown that they are interested in  
14 vigorously prosecuting their claims.

15 While we are -- neither side is aware of the reasons  
16 that these individuals have become unresponsive, they've  
17 already demonstrated that this is not a willful or bad-faith or  
18 at-fault lack of responsiveness. It is most likely due to  
19 issues that they are facing personally.

20 So we would like to be able to give them more time,  
21 especially given that defendant has indicated that they would  
22 like to use this information in response to plaintiffs' motion  
23 for class certification and for final certification of the  
24 collective.

25 Our motion will be due sometime soon, but their

1 opposition motion won't be due for at least several weeks after  
2 that date. So there is no immediate prejudice to waiting for  
3 those responses.

4 THE COURT: Okay. The time to respond to the requests  
5 to admit has passed. I am not giving those plaintiffs more  
6 time to respond.

7 I will allow Mr. Stafford's responses to count. And  
8 the motion to dismiss is denied. But the non-responded-to  
9 requests to admit are deemed admitted, and you will move  
10 forward that way.

11 I do think dismissal, even without prejudice, is too  
12 harsh a sanction for the failure to comply with discovery in  
13 light of the history of their participation.

14 And the ordinary recourse to untimely discovery,  
15 especially in the context of requests to admit, is to deem  
16 those requests admitted.

17 So the non-responded-to requests to admit are  
18 admitted. Mr. Stafford's untimely response will be allowed to  
19 stand.

20 But fact discovery is closed. And so there will be no  
21 more supplements or rolling information coming in late.  
22 Because now you need to, and we all need to, talk about what's  
23 happening next and what's the timeline for that, and what are  
24 your respective visions for class certification and summary  
25 judgment, what order are briefs going to be coming in, how many

1 pages are you going to want. If you're moving for summary  
2 judgment, how many facts are you going to want.

3 I think we should talk about whether -- well, I want  
4 to hear from you first what your vision is and then I'll let  
5 you know what I think.

6 And I know back in July, there was a proposed schedule  
7 for summary judgment and class certification.

8 So first, let's talk about -- so the motion to  
9 dismiss, which is docket 231, is denied.

10 The expert discovery, is that all done except for the  
11 individualized damages expert discovery that had been deferred?

12 What's the status? I'll ask plaintiffs.

13 MS. SRINIVASAN: Yes, Your Honor.

14 Expert discovery concluded last Friday, on January  
15 17th. I think the only item outstanding from that is if the  
16 parties intend to file motions to strike any of the expert  
17 opinions. We would just ask for a briefing schedule for that.

18 But, otherwise, expert discovery has concluded outside  
19 of individualized damages calculations.

20 THE COURT: Have you discussed how you want to proceed  
21 at this point, since the proposal back in July? And what's the  
22 plaintiffs' proposal?

23 MS. SRINIVASAN: Sure. The parties have met and  
24 conferred and have a proposal for you, Your Honor.

25 The proposal is that plaintiffs' motion for class

1 certification and final certification of the collective, as  
2 well as defendant's motion for summary judgment with respect to  
3 the five named plaintiffs, as well as motions to strike any  
4 expert opinions, would all be due on the same day, and our  
5 proposal is March 28th for those motions.

6 I can discuss our request on page limits at the same  
7 time or afterward.

8 THE COURT: Do you know, on behalf of plaintiffs, now  
9 whether you're moving to strike any defense experts?

10 MS. SRINIVASAN: We -- given that the expert discovery  
11 just concluded, we're not certain. There is a strong  
12 possibility that we will.

13 THE COURT: And does the defense know now whether  
14 you're moving to strike plaintiffs' experts?

15 MS. LESSER: We have the same answer, that we  
16 concluded last week and are still considering our options.

17 THE COURT: Are the plaintiffs moving for summary  
18 judgment on --

19 MS. SRINIVASAN: We are --

20 THE COURT: -- any issues?

21 MS. SRINIVASAN: -- not, Your Honor.

22 THE COURT REPORTER: I'm sorry?

23 MS. SRINIVASAN: We are not intending to.

24 THE COURT: And what's the defense thinking in terms  
25 of summary judgment?

1           And by that, I mean, are there global legal theories  
2 or issues that you're going to attack along with individual  
3 plaintiff-specific issues on the merits?

4           And I am asking that because I am thinking, how  
5 unwieldy is it going to be? And should we break things up a  
6 little bit so that it's a little more manageable?

7           And then, related to that, it gets challenging from,  
8 frankly, a time management perspective to have the motions to  
9 strike experts at the same time that you're briefing summary  
10 judgment.

11           So that's something to think through: What's a good  
12 use of your time? And sometimes it makes good sense to just  
13 give the judge everything and let the judge figure out what  
14 order the judge wants to sort through them. But sometimes it  
15 might be better to do it in bite-size pieces.

16           I am making no promises about how quickly I am going  
17 to get to anything. But that's a long preface to asking the  
18 question I started with, which is, what's your vision for  
19 summary judgment?

20           MS. ABER: Yes, Your Honor. We do think that there  
21 are global issues; thinking back to our motion to dismiss, the  
22 primary beneficiary analysis that applies to not just the named  
23 plaintiffs individually, but the entire class collective legal  
24 issue as a whole.

25           THE COURT: Is your -- I am not committing you to

1 this, but is your thought that that would be what your motion  
2 for summary judgment is? Or, are you thinking your motion for  
3 summary judgment will also say: And plaintiff by plaintiff,  
4 here are reasons why we get summary judgment on this particular  
5 plaintiff?

6 MS. ABER: Without committing to any particular  
7 strategy, I would say I think our summary judgment motion  
8 will -- we hope will dispose of the case as a whole. So it  
9 will act globally in addition to potentially dealing with  
10 anything as to the individual plaintiffs.

11 THE COURT: What is your thought on moving for summary  
12 judgment at the same time that any motions to strike experts  
13 would be due?

14 MS. ABER: I think, at this point, we had considered  
15 that would be the case and prepared ourselves for that being  
16 the case. So I think we're open to other proposals, if the  
17 Court has them, but -- yeah, we're willing to consider.

18 THE COURT: And I imagine if there's a motion to  
19 strike plaintiffs' experts, one or more of plaintiffs' experts,  
20 that also will be directed to the motion for class  
21 certification. Am I right about that?

22 MS. ABER: Yes, Your Honor.

23 THE COURT: And until the defense sees the motion for  
24 class certification, they might not know really whether they  
25 want to move to strike a particular plaintiffs' expert or what

1 part of the plaintiffs' expert opinion they want to strike, or  
2 ask for an evidentiary ruling with respect to part of the  
3 expert's opinion.

4 So I think what we ought to do is table the motions  
5 for summary judgment until plaintiffs file the motion for class  
6 certification and the defense then sees in that motion how  
7 plaintiffs are using experts in support of class certification.

8 And then fairly quickly on the heels of that motion  
9 getting filed, I would think the defendant can file an opening  
10 motion and brief for summary judgment. Then we can all confer  
11 and talk about: Now that you know what both sides' opening  
12 salvos are, what makes sense for the next rounds? And how and  
13 when we ought to do that.

14 And then that would also include -- if not, at that  
15 point, a motion about experts, we would at least talk about:  
16 Are you ready to file a motion with respect to experts? And  
17 how quickly can you do that?

18 The alternative would be, as you propose, everyone  
19 files an opening salvo on the same day and then we could talk  
20 after that.

21 The reason I am thinking about giving, effectively,  
22 the defense a little time to see the plaintiffs' motion for  
23 class certification before moving on experts and for summary  
24 judgment is so that we might be able to have a more intelligent  
25 conversation about the vision of the case that way.

1           You know much more than I do about what this is going  
2 to look like, and you probably already know a lot of what's  
3 coming. And since you've talked and you thought it made sense  
4 for everyone to move at the same time, that might be the better  
5 approach.

6           So I am not suggesting that what I had just spun out  
7 makes better sense. I just wanted to think that through. So I  
8 am putting that idea out there.

9           At a minimum, I think I want to see the opening briefs  
10 before we set deadlines for responses and replies.

11           So with those thoughts from me, what do plaintiffs  
12 think?

13           MS. SRINIVASAN: Just a couple of clarification  
14 questions, Your Honor.

15           Are you contemplating that plaintiffs' *Daubert*  
16 motions, if any, would still be due at the time that we file  
17 our motion for class certification?

18           THE COURT: I would think only -- if you don't have a  
19 defense motion for summary judgment to move against, then no.

20           MS. SRINIVASAN: Right. Okay.

21           THE COURT: It would be only -- but if you know you  
22 have a *Daubert* motion as to a defense expert you know is coming  
23 in response to your motion for class certification, then that  
24 would be the time to tee that up.

25           MS. SRINIVASAN: Got it.



1           And if the summary judgment deadline was moved so that  
2   it would be after plaintiffs file our motion for class  
3   certification, it would still be specific to the named  
4   plaintiffs in the action.

5           Is that what you're contemplating as well?

6           THE COURT: No. I am contemplating that the defense  
7   will file whatever motion for summary judgment they want to  
8   file.

9           Frankly, my preference would be, it is global so that  
10   we know, big picture, whether this case is moving forward or  
11   not.

12           My discussion about, are we talking about case  
13   individual-plaintiff-specific was to discourage that.

14           MS. SRINIVASAN: Right.

15           THE COURT: Because I am worried that that is too  
16   fact-specific to be meaningfully helpful to anybody, big  
17   picture. And I had long expected there to be at least one or  
18   more globally-applicable legal issues for which the facts are  
19   now developed that we could find out about the merits of those.

20           So my hope was that we may even say just move for  
21   summary judgment on the big picture claim and we can table  
22   whether you can move again on individual plaintiffs after we  
23   resolve that.

24           But I want to see both what the plaintiffs' vision is,  
25   and that likely will come in the class certification motion,

1 especially since plaintiffs are not moving for summary judgment  
2 on affirmative liability. So we know that.

3 So then we will get their motion for class  
4 certification and then the defense can tell me: We know what  
5 our summary judgment theory is, and we can do it in a global  
6 motion that will apply everywhere. Or, the defense -- we  
7 haven't resolved this. Or, the defense can just move at the  
8 same time you get their motion for class certification and then  
9 we can all talk.

10 So do plaintiffs have a preference on that?

11 MS. SRINIVASAN: I don't think so. I think we would  
12 be fine with the staged approach or we would be fine with  
13 having the deadlines at the same time.

14 We can see the benefits of -- I think both sides can  
15 probably come to this with a fuller understanding of each  
16 other's positions following our motion for class certification,  
17 but we are -- we're open to the Court's preference there.

18 THE COURT: Before I ask the defense, would you all  
19 mind if we recessed for a moment so that I can hear another  
20 case that will take less than a minute? And so you don't have  
21 to move, but we're going to recess this for just a moment.

22 Thank you. Let's call the next case.

23 (Whereupon, the Court heard another matter on his call.)

24 THE COURT: Recalling case 22 CV 1250.

25 What does the defense think about everybody moving at

1 the same time in March? Or do you want to see plaintiffs'  
2 opening salvo first and then talk to me about what next steps  
3 might be? Understanding that next steps from you might be  
4 pretty quick, because I will have expected that you will be  
5 getting ready and you know pretty much what you're planning to  
6 do. And then we're talking about tweaking maybe an approach or  
7 two and getting the defense in the mix pretty quickly on the  
8 heels of the plaintiffs' opening round.

9 So what do you think?

10 MS. ABER: Yes, Your Honor. We are -- we're fine with  
11 that proposal as well.

12 THE COURT: Well, I suppose I want to know, do you  
13 think it's a better approach?

14 MS. ABER: Yes.

15 THE COURT: Because your initial approach was, let's  
16 all do it at the same time. Maybe that's the better approach.  
17 I am not wed to anything.

18 MS. ABER: Yes. We think it's the better approach.

19 THE COURT: Page limits for plaintiffs' motion for  
20 class certification?

21 MS. SRINIVASAN: Sure. Our -- the proposal that we're  
22 jointly coming with is 50 pages for the opening motions.

23 THE COURT: Are you all available by phone on April  
24 2nd or 3rd? I'll give you a moment to look at your calendars.

25 MS. SRINIVASAN: That's fine for plaintiffs, Your

1 Honor.

2 THE COURT: Either day?

3 MS. SRINIVASAN: Either day, yeah.

4 MS. LESSER: That's fine for defendants as well.

5 Defendant. Apologies.

6 THE COURT: Okay. How about Wednesday, April 2nd at  
7 10:00 a.m. Central time for a phone status conference?

8 Everyone's nodding their heads. So that will be the  
9 next court date.

10 Plaintiffs' motion for class certification and final  
11 collective certification is due March 28th. And plaintiffs may  
12 use up to 50 pages for their brief.

13 Any motion from plaintiffs to exclude anticipated  
14 defense experts on the issue of class certification must also  
15 be filed by March 28th.

16 Then we will talk on April 2nd about how quickly the  
17 defense will be ready to respond to those motions, what  
18 expert-related motions the defense may have, and what the  
19 defense motion for summary judgment is going to look like, and  
20 then we'll talk about limits on the numbers of facts that can  
21 be used for summary judgment and the like.

22 MS. ABER: Your Honor, given that we may have to have  
23 our summary judgment motion prepared pretty shortly after that,  
24 would it be possible to talk about those limits today, in terms  
25 of the fact limits and the page limits, so we know what we're

1 looking at for summary judgment?

2 THE COURT: Sure. My first question is, do you --  
3 let's say you're only moving for summary judgment on big global  
4 issues related to the entirety of the case. How many facts do  
5 you think you need given that the local rule gives you 80 and  
6 that is, in most cases, enough?

7 MS. ABER: Your Honor, given the size of this case, we  
8 were hoping for 150.

9 THE COURT: So tell me why. And we can talk about how  
10 complicated the case is. But why 150 facts for theories that  
11 are fairly global about how The Salvation Army works, what its  
12 purposes are, what its mission is? And the nature of the  
13 plaintiffs' relationship to The Salvation Army when they are at  
14 these facilities seems like, at least what I would have  
15 expected from the defense, would be something along the lines  
16 of: This is how it works everywhere, at least thematically.  
17 And here's one fact that establishes what we do. And here's  
18 another fact that says this is how this works.

19 So why do you need 150 of those?

20 MS. LESSER: I think there are a few reasons why we  
21 think 150 is appropriate. One is just the extensive discovery  
22 that has happened in this case that we think will be useful for  
23 level-setting and helping Your Honor understand the summary  
24 judgment.

25 And a lot of what we anticipate going into our motion

1 is an understanding of The Salvation Army's mission and  
2 purpose, and that goes into a global understanding of what  
3 we're trying to put forth in our motion. A lot of that comes  
4 from several 30(b)(6) motions that lasted a number of days, as  
5 well as hundreds of thousands of pages of documents that were  
6 produced.

7 As you've seen from the motions practice, there is  
8 also quite a bit of discovery of the plaintiffs here. And we  
9 think that while those are individual plaintiffs, their  
10 experience also helps with understanding what happened globally  
11 at the program, at individual ARCs.

12 We also think what will come across in our argument is  
13 a description of the finances of the program, which requires  
14 some amount of space to describe. Just, as you know,  
15 explaining math sometimes takes a few paragraphs to get across  
16 as well.

17 THE COURT: Do the plaintiffs have any thoughts about  
18 the number of facts that the defense would want?

19 MS. SRINIVASAN: The defense had raised that proposal  
20 with us, and we were amenable to that, subject to plaintiffs  
21 also having additional -- the opportunity to have additional  
22 fact statements as well for our response.

23 THE COURT: The default approach in our local rules is  
24 that the plaintiffs get half as many for additional facts.

25 Would you be okay with that?

1 MS. SRINIVASAN: We had requested, when we discussed  
2 this with defendant, having a hundred additional facts.

3 Given that this is also plaintiffs' opportunity to  
4 explain the global narrative of the case, we recognize that  
5 that might take additional paragraphs than certainly than the  
6 default in the local rules and also more than the general rule  
7 of thumb of having half the fact statements.

8 So we -- that's why we had proposed a hundred.

9 THE COURT: This may be an unfair question, but do you  
10 know now that when you see a fact proposed by the other side,  
11 you are going to wordsmith it to death and dispute it because  
12 you don't like the way they phrase something, even though it  
13 is, generally speaking, consistent with the underlying  
14 evidence?

15 Is that the kind of -- am I going to get those kinds  
16 of fights in your fact statements? So I'll start with  
17 plaintiffs.

18 MS. SRINIVASAN: Is this directed at us?

19 (Laughter.)

20 THE COURT: It's directed to both sides.

21 MS. SRINIVASAN: Yeah.

22 THE COURT: I appreciate that you all actually do seem  
23 to be working well with each other. You're reaching these  
24 agreements about how to proceed. What sometimes happens,  
25 though, is that then I get a pile of disputes that make it very

1 difficult for me to really know how many of these do I need to  
2 actually resolve to get to the finish line.

3 And it makes that process on my end pretty  
4 challenging. And that's why you can sometimes wait a long time  
5 to get resolution, because I am going line by line, fact by  
6 fact to figure out whether a fact is controverted or not  
7 controverted. And I might not really fully appreciate, until I  
8 get to the end, that I never even had to do that.

9 So I am giving you a little peek behind the curtain on  
10 the process so that you know what it is you're getting when you  
11 have those kinds of fights.

12 So it's kind of an unfair question, but I do want to  
13 know, and expect, that if you're going to have these many  
14 facts, I don't want you to be wordsmithing, each side, about  
15 what they're proposing.

16 MS. SRINIVASAN: Yes.

17 THE COURT: Does that make sense?

18 MS. SRINIVASAN: It does make sense.

19 And I'll also note that following the motion for  
20 protective order, when we started responding to our phase, the  
21 parties were able to stipulate to a set of facts that did not  
22 take immense work and fighting over.

23 So I think we can -- I think we'll take a similar  
24 approach here of disputing facts where necessary, but not  
25 claiming that each and every fact in this case is controverted.



1           THE COURT: And does the defense share plaintiffs'  
2   hopefulness and notion that while you are adversaries, you also  
3   are reasonably approaching the facts with an understanding of  
4   what's really at issue and what's not at issue?

5           MS. LESSER: Yes, absolutely. We similarly found the  
6   process to come to an agreement on stipulations to work  
7   smoothly, and I think that process went well.

8           And our intention with this, understanding Your  
9   Honor's perspective here, will be to hone in on the disputes  
10   and any controverted facts that truly need to be brought to  
11   Your Honor's attention and not to, you know, pick fights with  
12   words or some such thing.

13          THE COURT: Then I will give defendants leave to use  
14   up to 150 facts in support of summary judgment. And plaintiffs  
15   will have up to a hundred additional facts in response to  
16   defendant's summary judgment motion.

17          I am less worried about page limits on briefs. And we  
18   can talk about the page limit on briefs once you see the motion  
19   for class certification. We can talk about page limits then.

20          What else can we/should we talk about, since we're all  
21   together this morning?

22          From plaintiffs, anything else you would like to talk  
23   about?

24          MS. SRINIVASAN: I don't think so.

25          I do have perhaps a differing proposal than what we

1 just offered you on the motions to exclude, given -- I think  
2 the way that we discussed the utility of those today made me  
3 wonder if it makes sense for plaintiffs' motion to be due  
4 following defendants responding on class certification, if that  
5 would perhaps aid the Court more and perhaps aid in us having,  
6 again, intelligent discussion around these issues, for us to  
7 see how defendants intend to use expert testimony and services  
8 opposing class certification.

9 But I also recognize, we haven't discussed that  
10 proposal with the other side. And so if you would like us to  
11 come back after conferring with a differing proposal, happy to  
12 do that.

13 THE COURT: Let's do this. I will revise my order and  
14 defer a deadline for plaintiffs to move to exclude defense  
15 experts. We can talk about that on April 2nd.

16 You will then -- defense will have seen the motion for  
17 class certification, you'll see how the plaintiffs are using  
18 experts, and you'll then be in a position to say: We're going  
19 to move to strike plaintiffs' class experts, and we are relying  
20 on our own experts on the following points, which will then  
21 tell you: Oh, if that's how they're going to use their  
22 experts, we're going to be moving to strike their experts.

23 And I likely will -- once I have a better handle on  
24 what experts are we talking about and how they map on to the  
25 plaintiffs' theory of class certification, and then we're

1 talking about summary judgment, we'll talk about: How do I  
2 resolve the fights over experts? And in what order with  
3 respect to substantive briefing on the issues?

4 So it may be that before you actually have to  
5 substantively respond to the motion for class certification,  
6 we're going to hash out what experts are fair game for class  
7 cert. or not.

8 Similarly, you may move for summary judgment and then  
9 maybe we have a discussion about what experts are fair game or  
10 not before responding to summary judgment. Or, maybe you know  
11 enough to say: It's not worth us, defense, moving for summary  
12 judgment until we know whether our experts are in or out.

13 And so we might have to talk about that. So it may be  
14 that we have a round of vetting experts before an opening  
15 motion for summary judgment and before a response to the class  
16 certification. Don't know how long that's all going to take.

17 I don't know if that's something that we should do in  
18 writing or whether that's something that we should have a  
19 *Daubert* hearing on before anyone puts pen to paper on briefs.  
20 Sometimes that's a faster way to resolve experts than brief  
21 after brief after brief on experts.

22 And we could do that. We could have a hearing. And  
23 now we're talking about springtime in Chicago, which is  
24 probably more palatable to you than winter.

25 Anything else, plaintiffs?

1 MS. SRINIVASAN: Thank you, Your Honor. No.

2 THE COURT: Anything from the defense?

3 MS. ABER: No, Your Honor. Thank you.

4 THE COURT: Does anyone in the real world refer to The  
5 Salvation Army as "TSA"?

6 MS. ABER: Yes.

7 MS. JACKSON: Or "The Army."

8 THE COURT: It's, frankly for me, a confusing acronym.  
9 I'm used to TSA in other contexts. But, anyway, that's neither  
10 here nor there.

11 Thank you for coming in. I appreciate seeing all of  
12 you. I will talk to you on April 2nd. Thank you.

13 MS. JACKSON: Thank you, Your Honor.

14 MS. ABER: Thank you, Your Honor.

15 MS. SRINIVASAN: Thank you, Your Honor.

16 THE COURT: We're in recess.

17 (Proceedings concluded.)

18

19 \* \* \* \* \*

20 I, Colleen M. Conway, do hereby certify that the  
21 foregoing is a complete, true, and accurate transcript of the  
22 Motion/Status Hearing proceedings had in the above-entitled  
case before the HONORABLE MANISH S. SHAH, one of the Judges of  
said Court, at Chicago, Illinois, on January 22, 2025.

23

24 /s/ Colleen M. Conway, CSR, RMR, CRR  
25 Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division

02/28/2025  
Date